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April 30, 2009

Camilla Faulk
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

**Re: Proposed Amendments to GR 18 Appendix Concerning
Jury Source List**

Dear Ms. Faulk,

AMERICAN CIVIL
LIBERTIES UNION
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JESSE WING
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EXECUTIVE DIRECTOR

The ACLU writes to express its concern with and opposition to the proposal to amend GR 18 Appendix Concerning Jury Source List. The proposed amendments will exclude individuals from jury source lists if their license or identicard has been expired for longer than 90 days (instead of the current two years) or if their voter status is inactive. While we recognize the valid purpose of reducing the number of non-deliverable addresses on the expanded jury source, the ACLU is concerned that reducing the time allowed to renew identification may reduce jury participation of low-income or minority individuals, who are already underrepresented on jury pools. Therefore, we ask the Court not to adopt the amendment excluding individuals whose identification has expired for longer than 90 days. Additionally, we urge the Court to study the impact of the proposal on jury diversity; to submit the proposed amendments to the Washington State Bar Association and other stakeholders for comment on this issue; and to consider methods for updating eligible jurors' addresses.

Ensuring that the jury source list reflects the broad diversity of our communities is a crucial constitutional requirement. The United States Supreme Court has stated that "a jury is a body . . . composed of the peers or equals of the person . . . that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds" and that "[f]or a jury to perform its intended function as a check on official power, it must be a body drawn from the community."¹ The issue involves not only litigants' right to a fair trial, but also our society's strong interest in a fair justice system that does not unduly exclude eligible jurors.

Additionally, many studies show that jury diversity is crucial to a just verdict. The chance of a member of an all-white jury prematurely judging a black defendant's guilt before deliberating is 1 in 2, whereas the chance of a white member of a racially mixed jury doing so is only 1 in 3.² Researchers have found that white jurors are more likely than black jurors to convict black defendants and to acquit defendants charged with crimes against black victims.³ And yet, African Americans may be underrepresented in jury pools due to lower rates of voter registration,⁴ lower rates of identification document ownership,⁵ higher rates of voting disenfranchisement due to

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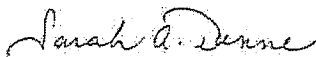
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felony convictions,⁶ and increased likelihood of being currently imprisoned.⁷ Therefore, it is particularly important that minority groups which are underrepresented in jury pools to begin with are not further disenfranchised by jury source list policies that disfavor certain communities.

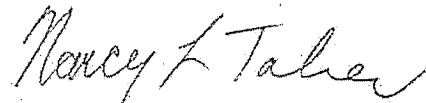
The ACLU is concerned that the proposed amendment to give potential jurors only 90 days to renew their identification, significantly less time than the current two year window, may negatively impact the diversity of Washington's jury pools. Renewing identification promptly may pose a greater challenge to minorities and low-income earners, who tend to rely more on public transportation and therefore face challenges in travelling to licensing offices during traditional working hours.⁸ The fact that minorities and low-income earners are less likely to possess identification at all demonstrates the greater difficulties they face in completing the necessary steps for obtaining and renewing licenses and identicards.⁹ Additionally, African Americans and Hispanics are more than twice as likely as Caucasians and Asian Americans to lack internet access at home, and therefore the convenience of renewing online.¹⁰ Furthermore, because failure to renew a DOL record does not necessarily indicate a residence change, removing prospective jurors from the source list based on failure to renew an expired license or identicard is an inappropriate and overbroad mechanism for reducing returned summonses.

In order to ensure a just trial, a jury must reflect the composition and diversity of the community. The reduction of the renewal grace period from two years to 90 days for drivers' licenses is unnecessary. Therefore, the ACLU recommends not adopting the amendment excluding those with identification expired for longer than 90 days. We also urge the Court to study the impact of the proposal (regarding both DOL and cancelled voter lists) on jury diversity further, and submit the proposed amendments to the Washington State Bar Association and other stakeholders, and take into consideration their concerns and comments on these issues before reaching a decision.

Sincerely,



SARAH A. DUNNE,
Legal Director



NANCY L. TALNER,
Staff Attorney

¹ Batson v. Kentucky, 476 U.S. 79, 87 (1986); Strauder v. W. Va., 100 U.S. 303, 308 (1880); Duncan v. Louisiana, 391 U.S. 145, 156 (1968).

² Samuel Sommer, Tufts University, cited by Harper's Index, available at <http://www.harpers.org/index/2006/8/16>.

³ Nancy J. King, *Post-Conviction Review of Jury Discrimination: Measuring the Effects of Juror Race on Jury Decisions*, 92 MICH. L. REV. 63, 83 (1993).

⁴ Library Index: Political Participation - Voter Registration, <http://www.libraryindex.com/pages/2933/Political-Participation-VOTER-REGISTRATION.html> citing "Table 4a. Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2004," U.S. Census Bureau, May 25, 2005.

<http://www.census.gov/population/www/socdemo/voting/cps2004.html> (showing that minorities have lower voter registration rates than non-Hispanic Whites)

⁵ Matt A. Barreto, Stephan A. Nuno, Gabriel R. Sanchez, "Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters," *Paper presented at the annual meeting of the American Political Science Association, Hyatt Regency Chicago and the Sheraton Chicago Hotel and Towers, Chicago, IL, Aug 30, 2007, available at*

http://www.allacademic.com/meta/p_mla_apa_research_citation/2/0/9/6/0/p209601_index.html

(stating that "For five out of six types of voter identification, Latinos, Asians, Blacks and immigrants were statistically less likely to have access to ID, as compared to Whites and the native born"); Matt A. Barreto, Stephan A. Nuno, Gabriel R. Sanchez, *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate*, Working Paper – Washington Institute for the Study of Ethnicity and Race (Nov. 8, 2007) at 13, *available at*

http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf (stating that "Whites are statistically significantly more likely to have access to valid ID . . . Blacks were found to be statistically less likely to

have access to ID")

⁶ Disenfranchised Felons By State, *citing* The Sentencing Project (Dec. 31, 2004) and The Mexican American Legal Defense and Education Fund (MALDEF) (December 2003) *available at* ACLU of Washington's website, <http://www.aclu-wa.org/detail.cfm?id=238> (showing that the rate of voting disenfranchisement due to felony convictions is five times as high for African Americans, and three times as high for Latinos, than for the general population)

⁷ Brief of Appellant at 29, *Farrakhan v. Locke*, No. 01-35032 (9th Cir. April 19, 2001) (stating that in Washington State, an African American man is 8.65 times more likely to be incarcerated than a White man).

⁸ *Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities*, UCLA: THE CIVIL RIGHTS PROJECT, *available at* http://www.civilrightsproject.ucla.edu/research/transportation/trans_paper03.php (stating that "[n]ationally, public transportation users are disproportionately minorities with low to moderate incomes.")

⁹ Brennan Center for Justice at NYU School Of Law, *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification* (Nov. 2006), http://www.brennancenter.org/page/-/d/download_file_39242.pdf (stating that "Twenty-five percent of African-American voting-age citizens have no current government-issued photo ID, compared to eight percent of white voting-age citizens" and "Citizens earning less than \$35,000 per year are more than twice as likely to lack current government-issued photo identification as those earning more than \$35,000")

¹⁰ Allison A. Stacker, *Comment: Cyber-Elections and the Minority Voter's Response*, 4 N.C. J. L. & TECH. 475, 481-82 (2003) *available at* http://jolt.unc.edu/sites/default/files/v4i2_sta.pdf